

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

Norfolk Division

UNITED STATES OF AMERICA)	CRIMINAL NO. 2:05cr
)	
)	
v.)	
)	
)	
C. WAYNE BERRY)	

STATEMENT OF FACTS

If this matter had gone to trial, the United States would have proven the charge contained in the criminal information beyond a reasonable doubt, by proof of the following facts, among others:

At all times material to the criminal information, C. WAYNE BERRY worked as a licensed insurance agent. Through his Portsmouth, VA business, C. Wayne Berry and Associates, he provided insurance and other financial services and counselling to hundreds of clients. To attract new clients, C. WAYNE BERRY regularly advertised and promoted his business and, beginning in or about 2002, described his firm as the “Safe Money Group” and “Safe Money Guys.” In sales pitches to existing and prospective clients who sought advice about what to do with their monies, BERRY told them that he could invest their monies in products that would protect the principal but would still obtain for them significant returns. In reliance upon BERRY’s representations, numerous persons provided him with substantial sums of monies to be invested primarily in annuities, and also in life insurance policies and investment accounts purportedly managed by BERRY’s firm.

Beginning in late 1996 and continuing through April 2005, C. WAYNE BERRY embezzled all or a portion of the monies provided to him for investment by over thirty of his clients. From 1996 through 2005, these clients provided BERRY with over \$2,500,000 for investment. Rather than investing all of the monies received as promised, BERRY embezzled over \$2,200,000 by keeping the cash received for himself and by depositing client checks into business and personal bank accounts. BERRY then used the embezzled funds to deal with business financial difficulties, to buy goods and services for himself and his family, and (after learning that his misdeeds had been and/or were about to be discovered) in late 2004 and early 2005 to pay back earlier victims of his fraud. BERRY used the stolen monies to help pay for, among other things: (1) business expenses; (2) car loans; (3) car purchases; (4) home mortgage loans; (5) assorted trips and cruises; (6) utilities; and (7) numerous other personal and credit card expenses. For example, in calendar year 2004 alone, BERRY used to the stolen monies to help pay down approximately \$291,983.62 in debts incurred on over 50 business and personal credit cards.

Among the clients victimized by BERRY were William and Patricia Morgan of Portsmouth, VA. They first met with BERRY in December 2003, after being referred to him by their son, who had done some construction work at BERRY's new office on Portsmouth Boulevard in Portsmouth, VA. When the Morgans expressed dissatisfaction with the performance of their existing investments in various stocks, mutual funds, and bank certificates, BERRY advised them to invest in annuities being offered by his firm that earned first year returns in excess of 13% and a minimum of 3% in ensuing years. The Morgans agreed to do so. From December 2003 through July 2004, they rolled over investment accounts (directly to the

insurance company offering the annuities) and transferred to BERRY checks (payable to the insurance company offering the annuities) and cash (inherited from Mr. Morgan's father) totaling \$434,475.26. These funds included \$200,000 in cash provided to C. WAYNE BERRY in \$100,000 increments on March 18, 2004 and July 29, 2004. Although he provided the Morgans with signed receipts stating that the cash would "be applied to [annuity] accounts . . . on William Morgan," BERRY never invested the money as promised. Instead, he kept the cash and spent it, as needed, on himself and his family.

To deceive the Morgans, C. WAYNE BERRY prepared and mailed to them false monthly portfolio statements falsely reporting that the \$200,000 had been invested with the balance of their funds in existing annuity contracts and that the Morgan were earning substantial gains upon all of their monies. For example, on or about September 11, 2004, in the Eastern District of Virginia, BERRY prepared a monthly account statement which he mailed through the U.S. mails to the Morgans' Portsmouth, VA address. This statement falsely reported that all of the Morgans' \$434,475.26 had been invested in four numbered annuity contracts and that these investments had recorded a year-to-date gain of \$47,428.28.

Respectfully submitted,

Paul J. McNulty
United States Attorney

By: _____
Robert J. Krask
Assistant United States Attorney

After consulting with my attorney and pursuant to the plea agreement entered into between myself and the United States, I hereby stipulate that the above statement of facts is true and accurate, and that had the matter proceeded to trial, the United States would have proved the same beyond a reasonable doubt.

C. WAYNE BERRY
Defendant

I am counsel for the defendant. I have carefully reviewed the above statement of facts with the defendant. To my knowledge, the defendant's decision to stipulate to these facts is an informed and voluntary one.

Lawrence H. Woodward, Jr.
Counsel for the Defendant